

IN RE: PETITION FOR SPECIAL HEARING  
SE/S Bird River Road,  
Opposite Reams Road,  
(10101 Bird River Road)  
15th Election District  
5th Councilmanic District  
Joseph F. Smith, et ux  
Petitioners

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 88-274-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the continuance of a nonconforming use of the subject property as a contractor's equipment storage yard, including but not necessarily limited to, the parking of two dump trucks, two tag-a-long trailers, four pieces of equipment, and one tractor, all as more particularly described on Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by Counsel, David A. Rodgers, Esquire. Also appearing on behalf of the Petitioners were the Petitioners' daughters, Diane Scott and Linda Felts. The following persons appeared as Protestants: Walter K. and Diane L. Frazier, Bernadette D. Ward, and Leo Rohe, Jr.

Testimony indicated that the subject property, known as 10101 Bird River Road, is zoned D.R. 2. Mr. Smith testified that he was born and raised in the dwelling on the subject property and has resided there since 1926. He testified that he is currently 62 years of age. Mr. Smith further testified that his parents owned the property and transferred it to him in 1945. Mr. Smith testified that the property was originally used as a farm. He indicated that when his father died in 1940 he began helping his mother with the farming; that when he began working outside the property, he continued to help with the farming; and that as a result of

the needs on the farm, there were always trucks and tractors on the property. Mr. Smith indicated that in the 1940s there were one or two trucks on the property and one tractor with various attachments, including but not limited to plows, which were necessary for maintaining the farm. He further indicated that the trucks were used to haul items to the market. Mr. Smith testified that the property is not currently used for farming and has not been used as such for over 2 years.

Mr. Smith testified that he began a hauling and excavating business, known as Smith Trucking and Excavating, in 1978. He indicated that he currently stores the dump trucks used in connection with said business on the subject property. He further indicated that there are currently two dump trucks along with a farm tractor and accompanying attachments to the tractor, including but not limited to, plows. Mr. Smith contends that he should be able to store the dump trucks on the property because they have been kept on the property since the 1970s. He contends that since he was permitted to have the trucks on the property in connection with the use of the property as a farm, he should be permitted to store replacement trucks in connection with his excavating business on the property. Counsel for the Petitioner contends that since at all times the dump trucks and farm trucks were used solely for the purpose of storage and maintenance, there should be no distinction between the use of the trucks in connection with the farming operation and their use in connection with the operation of the Smith Trucking and Excavating business.

The Protestants strongly disagree and contend that the use of the trucks in connection with the excavating business should not be permitted as a continued nonconforming use. They contend that to grant the Petitioners permission to store trucks related to the excavating business on the

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property is a violation of the zoning regulations and an abuse of the residential boundaries. Photos introduced and made a part of the record clearly indicate that at least on some of the trucks, there is advertisement and writing relating to the excavating business. Testimony indicated that all vehicles used in connection with the excavating business are stored on the subject property. The principal office of the excavating business is operated from the premises. Testimony indicated that in the past, the Petitioner has allowed other individuals to keep their vehicles on his property.

The Petitioner seeks relief from Section 104.1 pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) requesting that a determination be made that the storing of trucks used in the excavating and hauling business is permitted as a nonconforming use.

The B.C.Z.R. establish a nonconforming use in Section 104.1 as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used." (B.C.Z.R., 1955; Bill No. 18, 1976).

The facts in the record tend to indicate that the subject property was used as both a principal residence and a farm until approximately 1985. Said use was clearly established before the 1945 zoning regulations. Testimony was clear that when the Petitioners used the subject

-3-

property for farming, they owned and used trucks to haul produce and animals to market. Further, Petitioners contend that since the trucks were used in the farming operation, the trucks now used in the hauling business should be a permitted nonconforming use.

McKemy v. Baltimore County, Maryland, 34 Md. App. 257, 385 A.2d 96, (1978), is directly on point. In that case it was held that just because a piece of property was used as a parking lot to support one use does not mean that it can be used as a parking lot to support another use. In McKemy, the Court established that the following factors should be reviewed in determining whether a current activity is within the scope of the nonconforming use:

- 1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
- 2) is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;
- 3) does the current use have a substantially different effect upon the neighborhood;
- 4) is the current use a "drastic enlargement or extension" of the original nonconforming use.

Applying those factors to the instant case, it is clear that the current use of the subject property does not reflect a use similar in nature and purpose to the original nonconforming use of the property, nor is it merely a different manner of utilizing the original nonconforming use. In the opinion of the Deputy Zoning Commissioner, based upon the evidence presented, the use is clearly different in character, nature and kind, and does have a substantially different effect upon the neighborhood.

Further, in the opinion of the Deputy Zoning Commissioner, the use of the dump trucks, tag-a-long trailers, and additional pieces of

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equipment in connection with the hauling and excavating business, is not merely storage of the vehicles on the subject property. Testimony was clear that it is a family business whose basis of operation is the subject premises. The parking and storing of trucks on the subject property does not necessarily benefit or permit the parking or storing of a similar type or numbers of trucks on the property for another use.

For the reasons stated above, the requested relief for continued nonconforming status to use the property as a contractor's equipment storage yard, including but not limited to, the parking of two dump trucks and two tag-a-long trailers must be denied. However, the parking and storage of the tractor and accompanying attachments which are used to maintain the subject property shall be permitted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be denied.

THE IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of June, 1988 that the Petition for Special Hearing to approve the continued nonconforming use of the subject property as a contractor's equipment storage yard, including but not necessarily limited to, the parking of two dump trucks and two tag-a-long trailers, be and is hereby DENIED.

IT IS FURTHER ORDERED that the excavating and hauling business and/or the storage of the vehicles used in said business is not permitted in a D.R. 2 zone and as such, the operation of same must cease immediately.

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

ANN:djs

-5-

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3333

J. Robert Haines  
Zoning Commissioner

June 13, 1988

David A. Rodgers, Esquire  
19 E. Fayette Street, Suite 201  
Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL HEARING  
SE/S Bird River Road opposite Reams Road  
(10101 Bird River Road)  
15th Election District; 5th Councilmanic District  
Joseph F. Smith, et ux - Petitioners  
Case No. 88-274-SPH

Dear Mr. Rodgers:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3331.

Very truly yours,

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

ANN:djs

Enclosure

cc: Mr. & Mrs. Walter K. Frazier  
1013 Pohe Farm Lane, Baltimore, Md. 21220

Ms. Bernadette D. Ward  
10107 Bird River Road, Baltimore, Md. 21220

Mr. Leo Rohe, Jr.  
1014 Rohe Farm Lane, Baltimore, Md. 21220

People's Counsel

File

IN THE MATTER OF :  
THE APPLICATION OF :  
JOSEPH F. SMITH, ET UX :  
FOR A SPECIAL HEARING ON PROPERTY :  
LOCATED ON THE SOUTHEAST SIDE OF :  
BIRD RIVER ROAD, OPPOSITE REAMS RD. :  
(10101 BIRD RIVER ROAD) :  
15th ELECTION DISTRICT :  
BALTIMORE COUNTY :  
CASE NO. 88-274-SPH

#### OPINION

This matter comes before the Board as an appeal from the decision of the Deputy Zoning Commissioner, which denied the property owner's Petition for Special Hearing. The Petitioner sought approval for the "continuance of a nonconforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of two dump trucks, two tag-along trailers, four pieces of equipment and one tractor." The case was heard in its entirety in one day's hearing.

The facts as presented both by the Petitioner, his witnesses and the Protestants are largely not in dispute. The Petitioner owns the property of approximately 8 acres in size at 10101 Bird River Road. The Petitioner was born on the property in 1926, and other witnesses produced in support of the petition are also long-time residents and neighbors. The Petitioner testified that the property was originally used exclusively as a farm. During that time of use, vehicles stored on site necessary for the farming operation included a large farm truck, a tractor, and pickup trucks. The farming operation by the property owners ended sometime around 1950. However, in the following years, the property was leased for continued farming purposes up into the 1960's. At that time, the property owner's son continued the storage of trucks on the property, not associated with the farming operation, but associated with his contracting/hauling business. Rather than the "farm truck" and other heavy

Case No. 88-274-SPH  
Joseph F. Smith, et ux

agricultural equipment, dump trucks were placed on site. Still later, storage of gravel, sand and similar materials existed on site. However, this operation ceased as a result of the County's prosecution of the property owner for a zoning violation. Notwithstanding the fact that the storage of excavation materials has ceased, the Petitioner continues to park at least one truck on the site and seeks by his Petition for Special Hearing approval to continue this use.

The sole issue before this Board is simply stated; that is, whether the current use represents a continuance of the nonconforming use which has existed on this property for many years, even prior to the enactment of Baltimore County's Zoning Regulations in 1945.

The continuance of nonconforming uses is governed by Section 104 of the Baltimore County Zoning Regulations (B.C.Z.R.). Both the language of that section and the decisions rendered by the Appellate Courts of this State have made it clear that continuance of nonconforming uses is not favored at law. Notwithstanding the desirability of eliminating these uses, they may properly remain if not abandoned, materially altered, or expanded. In McKemy v. Baltimore County, 39 Md App 257, 385 A 2d 96 (1978), the Court of Special Appeals provided guidelines in determining whether a use had been so altered so that it would not be permitted to continue. The Court delineated a four-pronged test for that determination. This Board should consider:

- "(1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
- "(2) is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;
- "(3) does the current use have a substantially different effect upon the neighborhood;
- "(4) is the current use a 'drastic enlargement or extension' of the original nonconforming use."

Case No. 88-274-SPH  
Joseph E. Smith, et ux

In the present case, it seems clear that the family business run out of this property has continued. Likewise, the nature of that business can still be classified as a hauling operation, be it agricultural products or excavated material. Further, the nature of the vehicles remain the same; that is, commercial vehicles are still parked on site. Notwithstanding these considerations, however, the Board is obliged to continue the permitted use only to the extent as was exercised before. Therefore, we must limit the extent of the use so as to be consistent with the scope of the prior use. The Board will therefore grant the property owner's Petition for Special Hearing with restrictions, and will so order.

#### ORDER

Therefore, it is this 15th day of December, 1988 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing seeking approval of the nonconforming use be and is hereby GRANTED subject to the following restrictions:

- (1) The Petitioner will be allowed to park and/or store only the following commercial vehicles: one dump truck, one tag-along trailer, and one tractor on site at any given time. The Petitioner can park his own automobiles and pickup trucks, used for personal, noncommercial uses.
- (2) There shall be no excavation business on site.

Case No. 88-274-SPH  
James E. Smith, et ux

- (3) There shall be no storage of any property and/or material hauled in connection with the Petitioner's business on site other than that property and/or material within the truck or tag-along trailer parked on site.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Arnold G. Foreman

Henry H. Lewis

#### CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1524 Date of Posting: 8/14/88  
Posted for: Appeal  
Petitioner: Joseph E. Smith, et ux  
Location of property: 10101 Bird River Rd., Towson, Md.  
Location of Sign: 10101 Bird River Rd., Opposite Roams Road  
Remarks: on property of Petitioner  
Posted by: [Signature] Date of return: 8/15/88  
Number of Signs: 1

9/29/88 - Following notified of hear. set for Dec. 6, 1988, Tues., at 10 a.m.:

David Rodgers,  
Mr. and Mrs. W. Frazier  
Ms. Bernadette Ward  
Leo Rohe, Jr.  
People's Counsel  
David Fields  
Robt. Haines, Ann Nastarowicz, J. Dyer, Doc. Clerk

AC  
AZIMUTH CONSULTANTS

#### ZONING DESCRIPTION

Joseph and Mary Smith Property  
Deed Ref. 1786/316

Beginning on the South side of Bird River Road, 30 feet wide, at a distance of 75 feet Easterly of the centerline and opposite from its intersection with Reams Road, thence binding on the South side of Bird River Road, South 54 degrees 51 minutes West, 208.58 feet, thence leaving said road South 38 degrees 30 minutes East, 879.17 feet, thence North 51 degrees 30 minutes East, 774.25 feet, thence North 06 degrees 17 minutes East, 115.00 feet, thence South 75 degrees 45 minutes West, 606.58 feet and thence North 48 degrees 22 minutes West, 544.08 feet to the point of beginning. Also known as 10101 Bird River Road in the 15th Election District of Baltimore County.  
Containing 8.19c.

120 Cockeysville Road / Suite 105 / Hunt Valley, Maryland 21031 / (301) 785-2300

Joseph E. Smith  
Mary M. Smith  
10101 Bird River Road  
Baltimore, Maryland 21220  
Petitioners

\* Before the Zoning  
\* Commissioner of  
\* Baltimore County  
\* Case No. 88-274-SPH  
\* Date of Hearing:  
\* Friday, April 8, 1988

#### MEMORANDUM

The Petitioners, Joseph E. Smith and Mary E. Smith, by their attorney, David A. Rodgers, submits this Memorandum in support of their Zoning Petition.

#### FACTS

The Petitioners filed a Petition for special hearing for continuance of of a non-conforming use with the Zoning Commissioner of Baltimore County. A hearing was held on April 8th, 1988 and testimony taken of both Petitioners, which testimony revealed that at the time of the enactment of the zoning ordinance in Baltimore County in 1945, the premises in question was occupied and used as a farm and that a portion of the premises was used for the storage of farm equipment, including but not limited to a tractor, farming implements, a pick-up truck and at least one large flat bed truck. The testimony further revealed that over time that the farming operations began to decline, the large flat bed truck was replaced by at least one dump truck which was stored on the property in connection with another business which Petitioners were involved in, that being an excavating company. At all times the dump truck and the farm truck were used solely for the purpose of storage and maintenance.

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3333

J. Robert Haines  
Zoning Commissioner

August 16, 1988

Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petition for Special Hearing  
SE/8 Bird River Road, Opposite Roams Road  
(10101 Bird River Road)  
15th Election District, 5th Councilmanic District  
JOSEPH E. SMITH, ET UX - Petitioner  
Case No. 88-274-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 1988 by David A. Rodgers, Attorney, on behalf of Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. Robert Haines  
J. ROBERT HAINES  
Zoning Commissioner

JRH:cer

Enclosures

cc: Mr. David A. Rodgers, Attorney on behalf of Petitioner  
19 E. Fayette Street, Suite 301, Baltimore, Md. 21202

Mr. & Mrs. Walter K. Frazier (Protestants)  
1013 Roke Farm Lane, Baltimore, Md. 21220

Ms. Bernadette D. Ward (Protestant)  
10107 Bird River Road, Baltimore, Md. 21220

Mr. Leo Rohe, Jr. (Protestant)  
1014 Roke Farm Lane, Baltimore, Md. 21220

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, Md. 21204

#### ISSUE

Whether Petitioners are entitled to use the property for storage of the dump truck as a continuance of the non-conforming use.

#### ARGUMENT

The present use does not constitute a change in use, therefore should be allowed to continue.

#### RATIONALE

Under what conditions and to what extent one non-conforming use may be changed to another depends upon a number of factors including the terms of the governing statute or ordinance and the view of the zoning authorities as to what constitutes a change and as to whether the circumstances of a particular case are such as to demand the relaxation of the strict letter of the law. Thus, the principal consideration in determining the permissibility of a change in non-conforming use or structure are the terms and provisions of the applicable zoning regulations and the nature extent and effect of the change in question. Section 184 of the Baltimore County Zoning Regulations addresses non-conforming uses in Baltimore County and narrowly defines it. In part it states "A non-conforming use may continue except as otherwise specifically provided in these regulations; provided that upon any change from such non-conforming use whatsoever...., the right to continue or resume such non-conforming use shall terminate".

Furthermore, it is generally recognized that because of the great variety of determining factors, the permissibility of the

#### County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 430-3133 x 887-3180

December 15, 1988

David A. Rodgers, Esquire  
19 E. Fayette Street, Suite 301  
Baltimore, Md. 21202

Re: Case No. 88-274-SPH  
James E. Smith, et ux

Dear Mr. Rodgers:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely yours,

Kathleen C. Weidenhammer  
Administrative Secretary

Encl.

cc: Mr. & Mrs. Joseph E. Smith  
Mr. & Mrs. Walter K. Frazier  
Ms. Bernadette D. Ward  
Mr. Leo Rohe, Jr.  
P. David Fields  
Pat Koller  
J. Robert Haines  
Ann M. Nastarowicz  
James E. Dyer  
Docket Clerk -Zoning  
Arnold Jablon, County Attorney

#### County Board of Appeals of Baltimore County

111 W. CHESAPEAKE AVENUE, Rm. 315, County Office Bldg.  
Towson, Maryland 21204  
(301) 491-3180

HEARING ROOM 301

September 29, 1988

#### NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-274-SPH

JOSEPH E. SMITH, ET UX

10101 Bird River Rd.

15th E. District

6/13/88 - DZO DENIED Petition for  
Special Hearing

ASSIGNED FOR:

TUESDAY, DECEMBER 6, 1988, at 10 a.m.

cc: David Rodgers, Esq.

Counsel for Petitioner

Mr. & Mrs. W. K. Frazier Protestants

Ms. Bernadette Ward "

Mr. Leo Rohe, Jr. "

~~People's Counsel of Baltimore County~~ per J. Hess 10/4/88

P. David Fields

James Hoswell

J. Robert Haines

Ann Nastarowicz

James Dyer

Docket Clerk

June Holmer, Secy.

change in question in each case must rest on its own particular facts. In the absence of any provisions to the contrary on the zoning regulations, changes in a non-conforming use are usually limited to those which are not material or substantial. An illustration of an immaterial change or one that was not substantial can be found in Reich vs. Board of Zoning Appeals, 175 MD, 199 A. 812 (1938). In that case an order permitting the enlargement of an ice plant was sustained where it appeared that there was sufficient evidence to sustain the holding that such land had previously been occupied as a planing mill and lumber yard, an industry in the same class as the ice factory.

Somewhat variant statements found in some cases point out that a non-conforming use is not restricted to the identical particular use which was in existence at the time of the enactment of the zoning ordinance, but embraces any use substantially the same or similar; and that minor, immaterial or insignificant changes are permissible. Akram Machine and Tool Company vs. Lyndhurst. Petitioners contend that their present use is substantially the same use as the one at the time of the enactment of the Baltimore County Zoning Regulations which is the storing of trucks and equipment which the Petitioners use in their business and maintenance of same.

An example of this doctrine can be found in YM & YWHA vs. Eastchester, 281 and NYS 2nd 622 (1969), where the Court upheld the use of a building by the Plaintiff, a youth organization as a clubhouse as a continuance of a non-conforming use of the building for the same purpose by a veterans organization. "While

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different clubs may have different activities the essential character of the use as a clubhouse has not changed because of such different activities". YM & YWHA, Supra 626. A veterans organization may have a drill team practice or a fraternal club may have rituals, but this does not constitute a change. This case sheds light on the instant case where the Petitioners now use the property for the storage of the dump truck rather than a large flat bed truck or other farm truck which had been previously stored on the property. It points out how the character of the use remains the same and whatever minor change did occur, it would not be classified as significant.

Another illustration of this principal can be found in North American Building and Loan Association vs. Board of Adjustment, 117 MJ 63, 186A 727 (1936). In that case, at the time a zoning statute was passed, property was being used by the owner in his contracting business for the storage of trucks and sand and gravel which was a non-conforming use. A subsequent owner of the property was held to be entitled to use it for the storage of trucks and cheese, the Court saying "The use of the property was substantially the same at both periods, the only difference being in the materials stored and used. In both cases the building was used by the owner for the storage, use, and disposal of privately owned equipment and materials. To hold otherwise would be to say that a storage warehouse could not accommodate itself with storage of materials different from those existing in 1928 nor could it receive for such purposes new products possibly unknown at the earlier period. This would be a strained extension of the

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purposes of the legislation. This case is analogous to the instant case and the ruling by the Court touches and settles the very issue at heart in the instant case.

In Akram Machine and Tool Company, supra at 348, at the time of the enactment of the zoning ordinance, the premise in question were occupied and used by a manufacturer of music boxes. The premises were then sold to Akram who manufactured small blades and who also leased a portion of the premises to a chemical manufacturer. Although there were different machinery and different vehicles used, the Court upheld the continuation of a non-conforming use of the subject property and found no substantial change in the physical structure or the functional use thereof. This can also be applied to the instant case in that there has been no change in the physical structure or area of the property nor change in its functional use. The non-conforming use has been and continues to be the storage of vehicles and equipment for Petitioners business.

The present case can be distinguished from many cases holding that a change did occur. For example on Feldman vs. Hesck 254 SW 2nd 914 (1953 KY), a building was used for storing and servicing delivery trucks used in connection with the owners dairy business. The building was subsequently leased as a garage for servicing automobiles and that use was not permissible. The Court ruled that the burden upon the residential district was substantially increased when the use of the building was so changed as automobile repairs are carried on constantly. One wonders what the Court would have done had the Defendant used the

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property for storing delivery trucks used in connection with a different business conducted by the owner rather than the dairy business. It may be argued that the Court would have held that there was no change since the only difference was the type of vehicle being stored by the owner. The Petitioners in the instant case have not enlarged or changed the use whatsoever over the span of some forty-eight (48) years. The use goes on and should be allowed to go on. The use has not been altered, amended or increased. The present use does not represent such a change in character as to constitute a new and different use from that existing at the time of the passage of the ordinance. The passive use of the property has not been changed to a more active one, the use itself is still substantially the same, the only technical change one can find is the type of vehicle being stored by the owner. Petitioners contend that the use should be allowed to continue.

Respectfully submitted,

DAVID A. RODGERS

DAK/aale

-6-

## PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 2 tag-a-long trailers, 4 pieces of equipment, 1 tractor

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I, we do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: \_\_\_\_\_  
(Type or Print Name)  
Signature \_\_\_\_\_  
Address \_\_\_\_\_  
City and \_\_\_\_\_  
Attorney to \_\_\_\_\_  
Donor: \_\_\_\_\_  
(Type or Print Name)  
Signature \_\_\_\_\_  
Address \_\_\_\_\_  
City and \_\_\_\_\_  
Attorney's Telephone No.: 685-5100  
Address \_\_\_\_\_  
Phone No. \_\_\_\_\_

Legal Owner(s):  
Joseph E. Smith  
(Type or Print Name)  
Signature \_\_\_\_\_  
Mary M. Smith  
(Type or Print Name)  
Signature \_\_\_\_\_  
10101 Bird River Road  
Address \_\_\_\_\_  
Baltimore, Maryland 21220  
City and State \_\_\_\_\_  
Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone No. \_\_\_\_\_

ORDERED By The Zoning Commissioner of Baltimore County, this 12th day of November, 1987, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 25th day of January, 1988, at 11 o'clock A.M.

Zoning Commissioner of Baltimore County.

Z.C.O.-No. 1

(over)

## PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Walter K. Jorgensen	1013 Rock Farm Ln 21220
Bernadette A. Jorgensen	10107 Bird River Rd 21220
Shirley L. Jorgensen	1013 Rock Farm Ln 21220
Joe Jorgensen	1014 Rock Farm Lane 21220

1/25/88

## PROTESTANT(S) SIGN-IN SHEET

APPEARANCE 1/25/88 ADVISE D POSTERED

NAME	ADDRESS
1) Walter K. Jorgensen	1013 Rock Farm Lane
2) Bernadette A. Jorgensen	10107 Bird River Rd
3) Shirley L. Jorgensen	1013 Rock Farm Lane
4) Joe Jorgensen	1014 Rock Farm Lane

Cover - make sure all of above  
Petitioners notified of red date table  
Reset sign - plus - like

## PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Walter K. Jorgensen	1013 Rock Farm Ln
Bernadette A. Jorgensen	10107 Bird River Rd
Shirley L. Jorgensen	1013 Rock Farm Ln
Joe Jorgensen	1014 Rock Farm Lane

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 15th Date of Posting: 3/25/88  
Posted for: Special Hearing  
Petitioner: Joseph E. Smith, et al.  
Location of property: 10101 Bird River Rd, Towson, Md.  
Location of Sign: 10101 Bird River Rd, Towson, Md.  
Remarks: Petitioners are parties of B.L. 19222  
Posted by: [Signature] Date of return: 3/25/88  
Number of Signs: 1

## CERTIFICATE OF PUBLICATION

TOWSON, MD, March 17, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on March 17, 1988.

THE JEFFERSONIAN,

Publisher

PLAT TO ACCOMPANY SPECIAL HEARING FOR CONTINUANCE OF NON-CONFORMING USE FOR

JOSEPH & MARY SMITH PROPERTY  
Election District 15-50 Baltimore County, Maryland  
Date: July, 1987

AZIMUTH CONSULTANTS, INC.

Suite 105  
120 Cockeysville Rd.  
Hunt Valley, Md 21031  
(301) 785-2300

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3333

J. Robert Haines  
Zoning Commissioner

Date: 2-20-88



Dennis F. Rasmussen  
County Executive

Mr. & Mrs. Joseph E. Smith  
10101 Bird River Road  
Baltimore, Maryland 21220

Re: Petition for Special Hearing  
Case Number: 88-274-SPH  
SE/S Bird River Road opposite Reams Road  
15th Election District - 5th Councilmanic District  
Petitioner(s): Joseph E. Smith, et ux  
HEARING SCHEDULED: FRIDAY, APRIL 8, 1988 at 2:00 p.m.

Dear Mr. & Mrs. Smith:

Please be advised that advertising and posting of the above-referenced property. All advertising and posting fees must be paid prior to the hearing. Do not remove the sign(s) from the property from the time it posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and forward to the Zoning Office, County Office Building, Room 113, Towson, Maryland 21204.

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE-REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 50591

DATE: 2-20-88 ACCOUNT: 88-274-SPH

AMOUNT: \$ 141.00

RECEIVED FROM: 88-274-SPH

FOR: 88-274-SPH

VALIDATION OR SIGNATURE OF CASHIER

Advertising & posting of the

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3333

J. Robert Haines  
Zoning Commissioner

FEB. 10 1988



Dennis F. Rasmussen  
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing  
Case Number: 88-274-SPH  
SE/S Bird River Road opposite Reams Road  
(10101 Bird River Road)  
15th Election District - 5th Councilmanic District  
Petitioner(s): Joseph E. Smith, et ux  
HEARING SCHEDULED: FRIDAY, APRIL 8, 1988 at 2:00 p.m.

Special Hearing: The continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 4 pieces of equipment, 1 tractor.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

cc: Mr. & Mrs. Smith  
David A. Rodgers, Esq.

Bernadette D. Ward  
Leo R. Rohr, Jr.

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

88-274-SPH

District: 15th  
Posted for: Special Hearing  
Petitioner: Joseph E. Smith  
Location of property: SE/S Bird River Rd. opposite Reams Rd.  
10101 Bird River Rd.  
Location of Sign: SE/S Bird River Rd. opposite Reams Rd.  
on the property of Baltimore  
Remarks: [Signature]  
Posted by: [Signature]  
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. Jan. 7, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Jan. 7, 1988.

THE JEFFERSONIAN,

Publisher

NOTICE OF HEARING  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:  
Case number: 88-274-SPH  
SE/S Bird River Road  
Opposite Reams Road  
(10101 Bird River Road)  
15th Election District - 5th Councilmanic District  
Petitioner(s): Joseph E. Smith, et ux  
DATE/TIME: Monday, January 25, 1988 at 11:00 a.m.  
Special Hearing - Continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 4 pieces of equipment, 1 tractor.  
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.  
J. ROBERT HAINES  
Zoning Commissioner of Baltimore County  
1013 Jan. 7

LAW OFFICES  
DAVID A. RODGERS  
19 E. FAYETTE STREET  
SUITE 201

BALTIMORE, MARYLAND 21202  
(301) 685-2800

December 28, 1987

Baltimore County Zoning Commission  
County Office Building, Room 106  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No: 88-274-SPH  
Mr. & Mrs. Joseph E. Smith  
SE/S Bird River Road opposite Reams Rd.  
D/Hearing: 1/25/88

Dear Mr. Haines:

Please postpone the above-captioned hearing, as my clients, Mr. & Mrs. Joseph E. Smith will be out-of-state during the month of January and February.

Please re-schedule this matter sometime after March 1st. There have been no prior postponements in this matter.

Thank you for your kind cooperation.

Very truly yours,

David A. Rodgers

DAR:d1

cc: Mr. & Mrs. Joseph E. Smith

January 6, 1988

David A. Rodgers, Esq.  
19 E. Fayette Street  
Baltimore, Maryland 21202

Re: Case number: 88-274-SPH  
SE/S Bird River Road Opposite Reams Road  
D/Hearing: 1/25/88

Dear Mr. Rodgers:

Please be advised that this office is in receipt of your request for a postponement relative to the above captioned matter, and, accordingly, the matter will be reset after March 1, 1988.

Please be further advised that your postponement request did not reach this office in time to halt posting and advertising in connection with the January date. Therefore, your clients must pay these costs, the amount of which you will be advised shortly.

Thank you for your kind cooperation.

Very truly yours,

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified below in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Case number: 88-274-SPH

SE/S Bird River Road opposite Reams Road  
Case number: 88-274-SPH

SE/S Bird River Road opposite Reams Road  
(10101 Bird River Road)  
15th Election District - 5th Councilmanic District  
Petitioner(s): Joseph E. Smith, et ux - Petitioners  
DATE/TIME: Monday, January 25, 1988 at 11:00 a.m.

Special Hearing - Continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 4 pieces of equipment, 1 tractor.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

cc: David A. Rodgers, Esq.  
Mr. & Mrs. Joseph E. Smith  
file

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified below in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Case number: 88-274-SPH

SE/S Bird River Road opposite Reams Road  
Case number: 88-274-SPH

SE/S Bird River Road opposite Reams Road  
(10101 Bird River Road)  
15th Election District - 5th Councilmanic District  
Petitioner(s): Joseph E. Smith, et ux - Petitioners  
DATE/TIME: Monday, January 25, 1988 at 11:00 a.m.

Special Hearing - Continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 4 pieces of equipment, 1 tractor.

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J. Robert Haines

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

Notice of Hearing

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified below in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Case No. 88-274-SPH

SE/S Bird River Road opposite Reams Road

(10101 Bird River Road)

15th Election District

Petitioner(s): Joseph E. Smith, et ux - Petitioners

DATE/TIME: Monday, January 25, 1988 at 11:00 a.m.

Special Hearing - Continuance of a non-conforming use as to a contractor's equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 4 pieces of equipment, 1 tractor.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

Zoning Commissioner of Baltimore County

The Times

Middle River, Md., Jan 7 1988

This is to Certify, That the annexed

was inserted in The Times, a newspaper printed and published in Baltimore County, once in each

of successive

weeks before the 7th day of

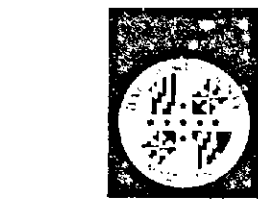
Jan 1988

for the Publisher.

Baltimore County  
Fire Department  
Townson, Maryland 21204-2586  
(410) 430-4300  
Paul H. Remick

October 16, 1987

J. Robert Haines  
Zoning Commissioner  
Office of Planning & Zoning  
Baltimore County Office Building  
Townson, MD 21204



Dennis F. Rasmussen  
County Executive

Re: Property Owner: Joseph E. Smith, et ux

Location: SE/S Bird River Road opposite Reams Road

Item No.: 117 Zoning Agenda: Meeting of 10/6/87

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property, are required and shall be located at intervals or \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.
- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- ( X ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill* Noted and Approved: *John F. O'Neill*  
Planning Group Fire Prevention Bureau  
Special Inspection Division

/j1



Maryland Department of Transportation  
State Highway Administration

Richard H. Trainor  
Secretary  
Hal Kassoff  
Administrator

October 21, 1987

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Townson, Maryland 21204  
Att: James Dyer

Re: Baltimore County  
Item #117  
Property Owner: Joseph E. Smith, et ux  
Location: SE/S Bird River Road opposite Reams Road (White Marsh Blvd ext. Maryland Route 43)  
Existing Zoning: D.R. 2  
Proposed Zoning: Special Hearing to approve continuance of a non-conforming use as to a contractors equipment storage yard, including but not necessarily limited to the parking of 2 dump trucks, 2 tag-a-long trailers, 4 pieces of equipment, 1 tractor  
Area: 9 acres  
District: 15th

RECEIVED  
OCT 27 1987  
ZONING OFFICE

Dear Mr. Haines:

On review of the submittal of July, 1987 for continuance of non-conforming use for Joseph and Mary Smith property, the State Highway Administration Bureau of Engineering Access Permits offers the following comments.

The approximate proposed right-of-way for the extension of Maryland Route 43 (White Marsh Boulevard) from U.S. Route 40-E to Eastern Avenue, Maryland Route 150, Alterante 3 is shown on the attached sketch.

The State Highway Administration will require the site plan to be revised showing the approximate proposed right-of-way prior to a hearing date being set. Contact Larry Brocato of this office, 333-1350.

Very truly yours,

*Creighton J. Mills, Jr.*  
Creighton J. Mills, Jr.  
Acting Chief-Bureau of  
Engineering Access Permits

L2/es  
attachment My telephone number is (301) 333-1350

cc: Azimuth Consultants, Inc. Impaired Hearing or Speech  
383-7555 Baltimore Metro - 565-0431 D.C. Metro - 1-800-432-5062 Statewide Toll Free  
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 12, 1988

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Townson, Maryland 21204

David A. Rodgers, Esquire  
19 E. Fayette Street, Suite 301  
Baltimore, Maryland 21202

RE: Item No. 117 - Case No. 88-274-SPH  
Petitioner: Joseph E. Smith, et ux  
Petition for Special Hearing

Dear Mr. Rodgers:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:kbb

88-274-SPH

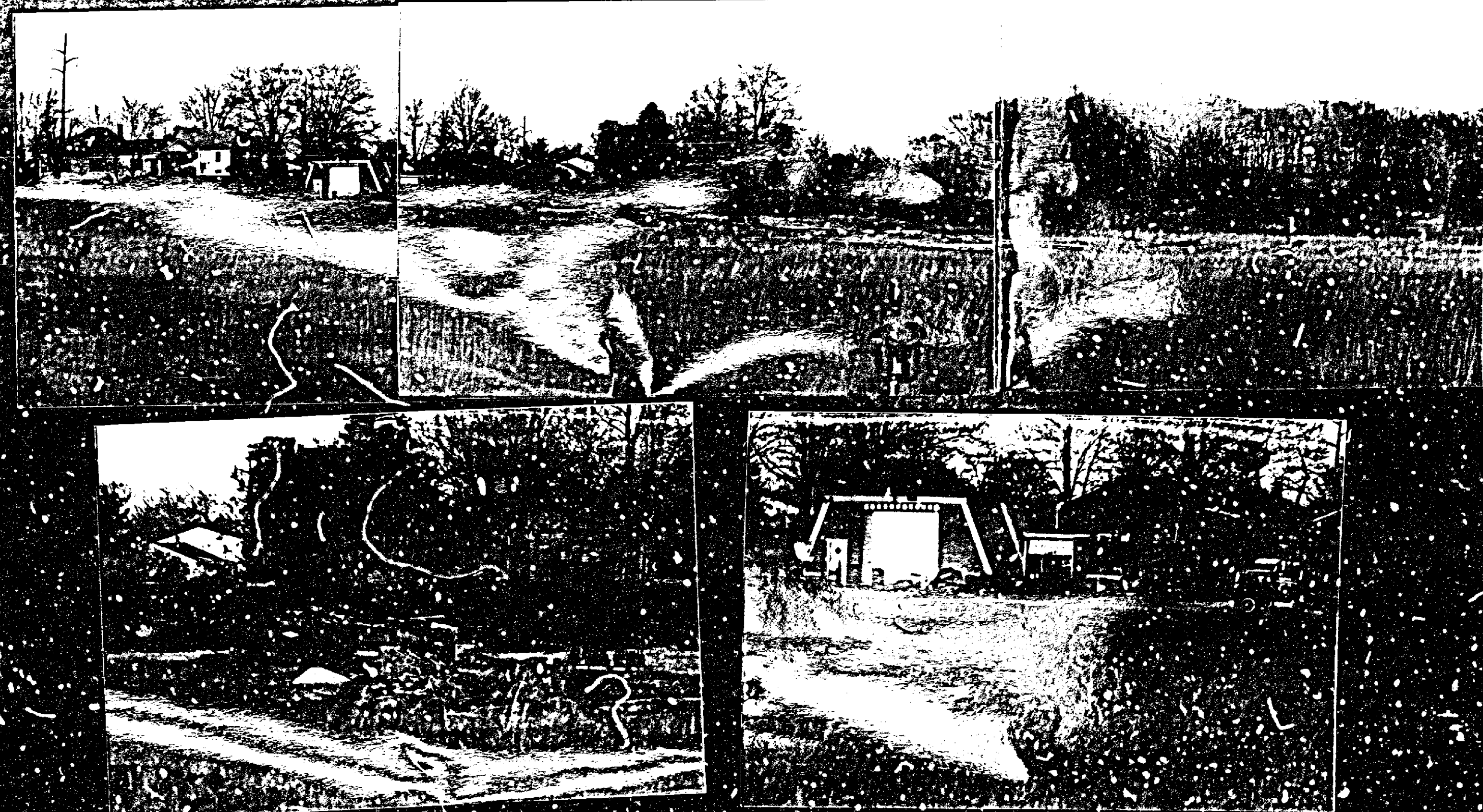
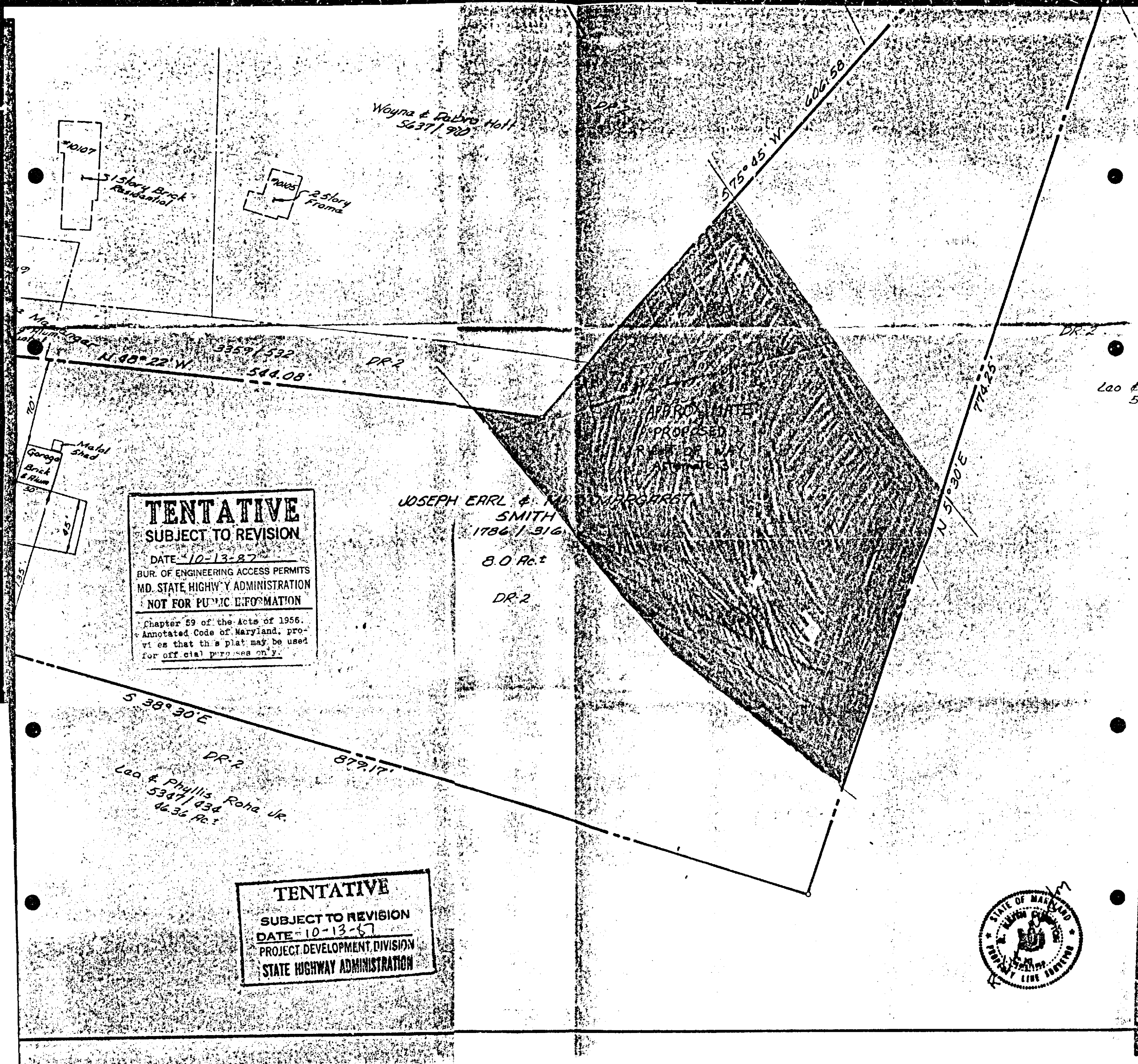
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building  
111 W. Chesapeake Avenue  
Townson, Maryland 21204

Your petition has been received and accepted for filing this  
3rd day of November, 1987.

*J. Robert Haines*  
J. ROBERT HAINES  
ZONING COMMISSIONER

Petitioner Joseph E. Smith, et ux Received by: James E. Dyer  
Petitioner's Attorney David A. Rodgers, Esquire Chairman, Zoning Plans Advisory Committee



Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Townson, Maryland 21204  
494-3333

August 16, 1988

Baltimore County Board of Appeals  
County Office Building, Room 315  
Townson, Maryland 21204

RE: Petition for Special Hearing  
SE/S Bird River Road, Opposite Reams Road  
(10101 Bird River Road)  
15th Election District, 5th Councilmanic District  
JOSEPH E. SMITH, ET UX - Petitioner  
Case No. 88-274-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 1988 by David A. Rodgers, Attorney, on behalf of Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner

JRH

Enc.

cc: Mr. David A. Rodgers, Attorney on behalf of Petitioner  
19 E. Fayette Street, Suite 301, Baltimore, Md. 21202

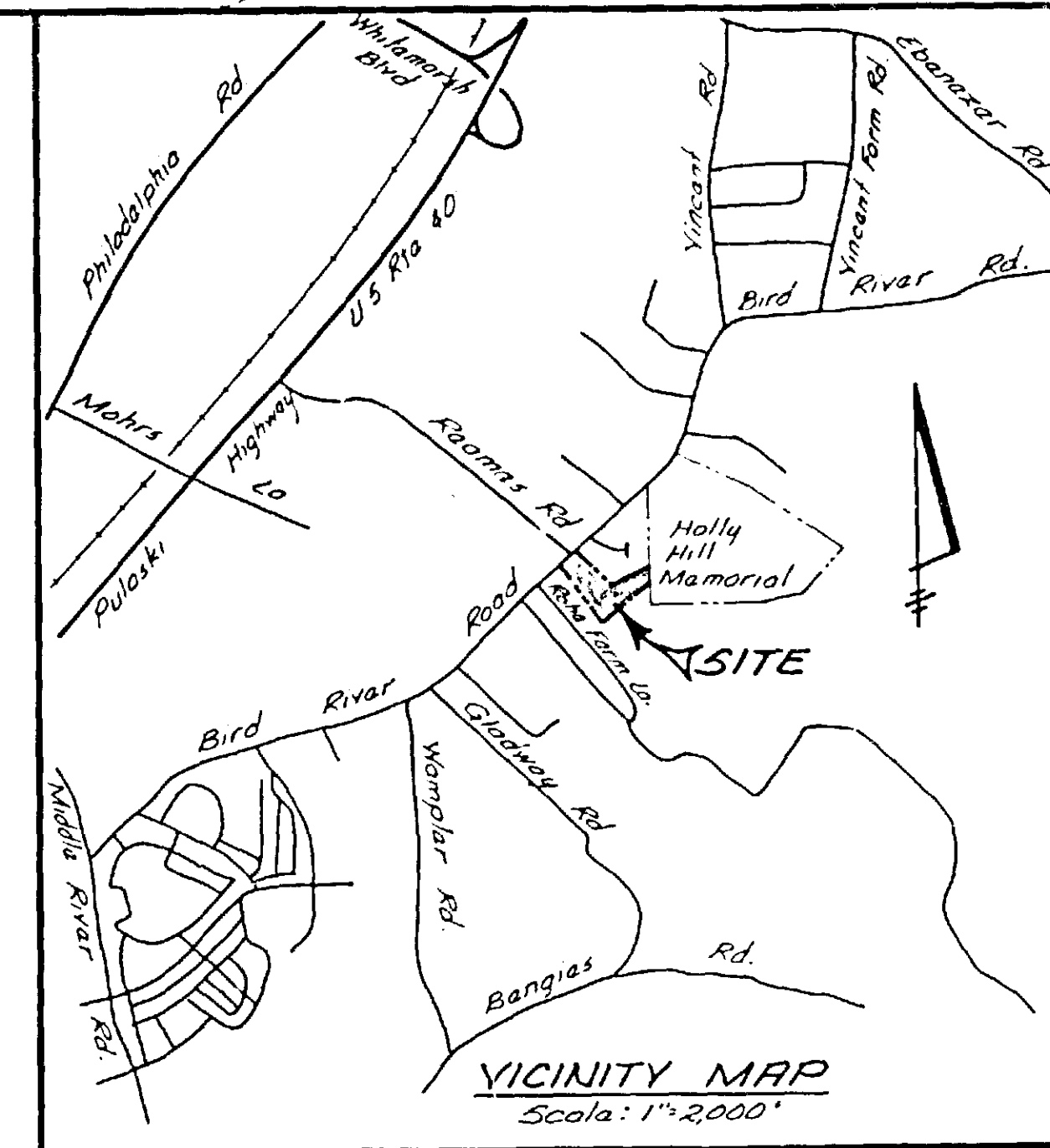
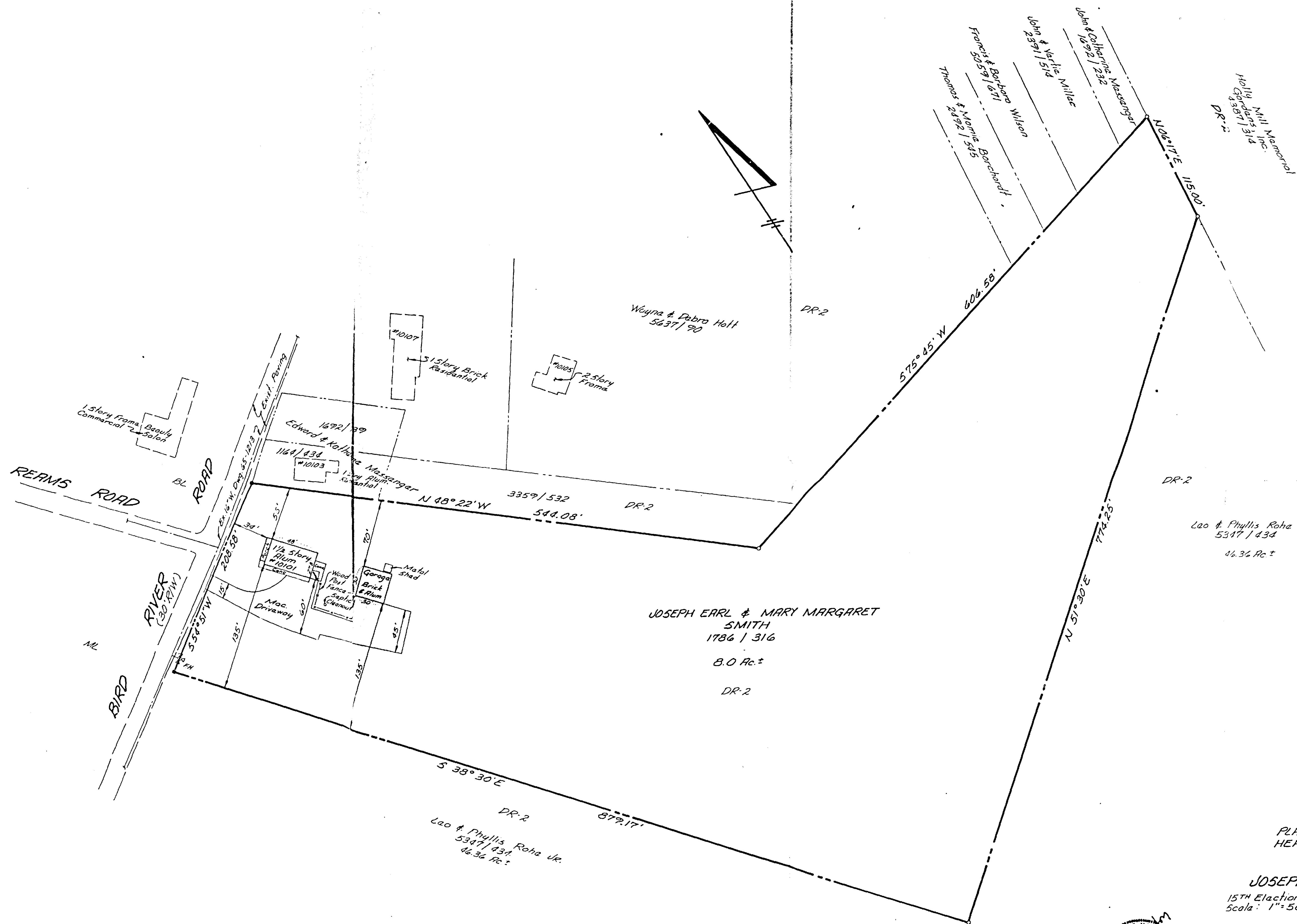
Mr. & Mrs. Walter K. Prozier (Protestants)  
1013 Roke Farm Lane, Baltimore, Md. 21220

Ms. Bernadette D. Ward (Protestant)  
10107 Bird River Road, Baltimore, Md. 21220

Mr. Leo Roke, Jr. (Protestant)  
1014 Roke Farm Lane, Baltimore, Md. 21220

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Townson, Md. 21204





Holly Hill Memorial  
1014 Jordan 314  
83871314  
DR-2

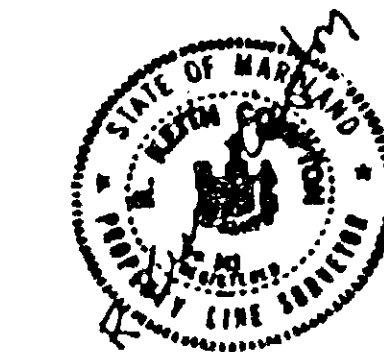
DR-2

Leo & Phyllis Roha Jr.  
5347 / 434  
46.36 Ac.±

JOSEPH EARL & MARY MARGARET  
SMITH  
1786 / 316  
8.0 Ac.±  
DR-2

Leo & Phyllis Roha Jr.  
5347 / 434  
46.36 Ac.±

PLAT TO ACCOMPANY SPECIAL  
HEARING FOR CONTINUANCE OF  
NON-CONFORMING USE  
FOR  
JOSEPH & MARY SMITH PROPERTY  
15TH Election District - Baltimore County, Maryland  
Scale: 1"=50' Date: July, 1987



AZIMUTH CONSULTANTS, INC.  
Suite 105  
120 Cockeysville Rd.  
Hunt Valley, Md 21031  
(301) 785-2300